

June 4, 2003

The Honorable Paul Helliker
Director
Department of Pesticide Regulation
1001 I Street
Sacramento, CA 95814

Re: Draft Environmental Justice Guidelines

Dear Director Helliker:

I write to offer you our organization's comments on your proposed environmental justice guidelines. Please do not hesitate to contact me with any questions or comments you might have.

Introductory Comments

Before offering you specific suggestions, please be advised that CAPCA offers you its comments in the spirit of ensuring that people of all races, cultures, and socio-economic strata enjoy equal, full, and fair access to environmental protection programs. The Department of Pesticide Regulation and its sister State agencies should reflect the guiding principle found in Government Code section 65040.2 in framing its regulatory programs and guidelines. Furthermore, the precept of fair and equal treatment should be the ethos that guides agency management and staff in its daily activities.

Specific Suggestions

Issue #1

Page 4 heading that reads as follows: **DPR will conduct pesticide risk assessments in a way to consider the potential disproportionate environmental impacts on communities of color and low-income populations.**

Comments: The Legislature in its framing of the guiding statutory law specifically rejected the labeling or *a priori* categorization of communities by attaching a racial or income designation. The Legislature did so, in part, because of the negative impact that such value-laden descriptions could have on the communities themselves. Moreover, the Legislature believed it more appropriate to focus on gaps and inadequacies that confront all people regardless of race, culture, or economic background. However, your suggested heading suggests a conclusion that only communities of color and low-income populations face the potential of disproportionate environmental impacts. To that end, CAPCA suggests that the heading be amended to properly reflect the balanced language found in the section of your guidelines, which follows the heading.

Suggested Modification: **DPR will conduct pesticide risk assessments in a way to that considers the potential disproportionate environmental impacts on all populations, including communities of color and low-income populations.**

Discussion: In our review of the legislative and administrative record, we note the suggestions offered by the California Council on Environmental and Economic Balance (“CCEEB”). We quote from a letter written on December 6, 2001 to Dr. Allen Lloyd, chair, the Air Resources Board (“ARB”), by President Victor Weisser in which he comments on the ARB’s proposed Policies and Action for Environmental Justice. The relevant section of Mr. Weisser’s comments follows below.

A. Legislative History

In recent years, the Governor Davis has signed into State law several bills to address environmental justice. These statutes are based on the State’s definition of “environmental justice” enacted by SB 115 (Solis, 1999):

“environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies.” [Cal. Gov’t. Code Section 65040.12 (c).]

In the various chaptered bills, including SB 115, the detailed provisions have included the word “**including**” in relation to low-income and minority communities to emphasize that the State’s environmental requirements and programs must treat low-income and minority communities fairly. The Legislature has consistently used the word “including” for emphasis in all of the bills. (One of which, SB 89 (Escutia, 2000) used the word “including” for emphasis in the requirements for Cal/EPA policies on environmental justice.

Cal/EPA participated in the development of that bill.) CCEEB has supported this language at the Legislature.

Following are quotations from State law showing the Legislature's consistent use of the word "***including***" in multiple pieces of legislation to emphasize that low-income and minority communities must be treated fairly.

1. SB 115 (Solis, 1999), added Public Resources Code Section 72000 (now Section 71110).

71110. The California Environmental Protection Agency, in designing its mission for programs, policies and standards, shall do all of the following:

(a) Conduct its programs, policies and activities that substantially affect human health and the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, ***including*** minority populations and low-income populations of the state;

(b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, ***including*** minority populations and low-income populations of the state. (...)

(d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, ***including*** minority populations and low-income populations of the state. (...)

2. SB 89 (Escutia, 2000)

SB 89 amended the Section quoted above but did not change the provisions quoted above.

3. SB 828 (Alarcon, 2001)

SB 828 renumbered and amended the Section quoted above but did not change the provisions quoted above.

4. AB 1390 (Firebaugh, 2001)

a. Added Intent Language:

(...) (b) It is the intent of the Legislature to do all of the following:
(...).

(2) Structure future state air quality programs in a manner that ensures the fair treatment of people of all races, cultures, and income levels, **including** minority populations and low-income populations of the state.
(...).

b. Added Section 43023.5 to the Health and Safety Code

43023.5(a) (...) districts with a population of one million residents or greater, in consultation with the state board, shall ensure that not less than 50 percent of the funds subject to that provision and any other funds appropriated for purposes of the programs (...) are expended (...) in communities with the most significant exposure to air contaminants or localized air contaminants, or both, **including**, but not limited to, communities of minority populations or low-income populations or both
(...).

Issue #2

Page five the section that currently reads as follows: **DPR will continue to reduce the pesticide risks to workers.**

The occupational setting poses the greatest risk of pesticide exposure. Many occupational settings involve workers of low-income and minority populations. DPR will continue to evaluate the risks to workers, ensure their unimpeded access to information, the right to file complaints without fear of retaliation, and reduce worker illnesses.

Suggested Modification: **DPR will continue to reduce the pesticide risks to workers.**

The occupational setting poses the greatest risk of pesticide exposure. ~~Many occupational settings involve workers of low income and minority populations.~~ DPR will continue to evaluate the risks to workers, ensure their unimpeded access to information, the right to file complaints without fear of retaliation, and reduce worker illnesses.

Comments: We suggest striking the sentence referring to low-income and minority worker populations consistent with the argument framed above related to issue 1. Instead of qualifying it to ensure that no population is being singled out we suggest dropping it in favor of the more inclusive language found elsewhere in the section. With this change we believe that DPR retains the integrity of its mission while staying true to the legislative history of this evolving area of public policy.

Issue 3

Page Six of the draft document states as follows: **Distribution of DPR's pollution prevention resources will be accessible to all races, cultures, and incomes.**

Grants and other opportunities can result in changes in pest management that reduce the risks from pesticides. This is especially important in low-income and minority areas. Pest management in schools can be done in a way that poses the least risk.

Specific Actions

- Target grant programs in low-income and minority areas, particularly to assist community-based/grassroots organizations that are working on local solutions to local environmental problems.
- Facilitate the adoption of integrated pest management in schools, especially in rural and low-income areas.
- Provide informational materials in English and Spanish to the public about pesticide use and disposal.

Suggested Modifications:

Distribution of DPR's pollution prevention resources will be accessible to all races, cultures, and incomes.

Grants and other opportunities can result in changes in pest management that reduce the risks from pesticides. ~~This is especially important in low-income and minority areas.~~ Pest management in schools can be done in a way that poses the least risk.

Specific Actions

- Target grant programs ~~in low-income and minority areas, particularly~~ to assist community-based/grassroots organizations that are working on local solutions to local environmental problems.
- Facilitate the adoption of integrated pest management in schools, ~~especially~~ including those in rural and low-income areas.
- Provide informational materials in English and Spanish to the public about pesticide use and disposal.

Comments: Our suggested changes comport with the need to be inclusive in the framing and development of regulatory and community outreach programs. For example, changes in pest management that reduce the risks from pesticides should be made available to all communities. There is no doubt that low-income and minority areas could benefit but so too could people of all racial and socio-economic groups found throughout California.

We agree that pest management in schools can be done in a way that poses the least risk. We additionally believe that pest control advisers possess particular expertise that could be harnessed in the schools to achieve this important and laudable goal. To that end, we encourage DPR and the educational community to reevaluate the wisdom of exempting schools and other institutions from the requirement of obtaining written recommendations from pest control advisers before embarking on a pest control strategy. We believe such a regulatory change could help accomplish public policy in a way consistent with the wording of this section.

Under specific actions, we suggest that the Legislature's adopted policy of equal treatment for all be applied and that the legislative history regarding "especially" v. "including" which was cited above be applied.

Concluding Comments

We generally find the draft guidelines to comport with the statutory design except where we have commented otherwise. We greatly appreciate the chance to provide our comments and hope that you will find them useful as you move to final adoption of your proposed environmental justice guidelines.

Sincerely,

KIMBERLY A. CRUM
Executive Director

cc: The Honorable Winston Hickox
Mr. Romel Pascual
Mr. Paul Gosselin
Ms. Linda Adams
Mr. Vincent Harris
Mr. Kurt Fondse
Mr. Gary Silveria
Mr. Toby Halkovich
The Gualco Group, Inc.